

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA

- against -

15-CR-806 (JGK)

JOSE JUAREZ,

MEMORANDUM OPINION AND  
ORDER

Defendant.

---

JOHN G. KOELTL, District Judge:

By letter dated August 3, 2016, the Government requested that the Court hold the pending motion to suppress in abeyance pursuant to the fugitive disentitlement doctrine. See United States v. Hayes, 118 F. Supp. 3d 620, 624 (S.D.N.Y. 2015). The defendant failed to appear at the argument on the motion to suppress and failed to comply with the conditions of his release. An arrest warrant has been issued for the defendant.

The Government also argued that although the Court of Appeals for the Second Circuit did not reach the issue of whether a defendant has a reasonable expectation of privacy in his cell phone's location in United States v. Caraballo, No. 12-3839-CR, 2016 WL 4073248 (2d Cir. Aug. 1, 2016), dicta in Caraballo supports denying the motion to suppress.

Counsel for the defendant responded on August 10, 2016, arguing that this Court should decide the motion to suppress notwithstanding the defendant's absence and that Caraballo supports the motion to suppress.

The Court will defer a decision on the motion to suppress pursuant to the fugitive disentitlement doctrine. See Hayes, 118 F. Supp. 3d at 626-27. Moreover, Caraballo shows that the legal issues in the pending motion implicate a developing area of law. Caraballo, 2016 WL 4073248, at \*6 (declining to “resolve this important and complex Fourth Amendment question” because the Court concluded that exigent circumstances justified the officers’ pinging of Caraballo’s phone). The Court will hold the motion in abeyance until such time as the defendant again appears in this case, and the Court prospectively excludes from Speedy Trial Act calculations the time from today, August 12, 2016, until such time as the defendant is no longer unavailable. 18 U.S.C. § 3161 (h)(3)(A) and (B). This action is stayed until the defendant appears again in this action.

**SO ORDERED.**

**Dated: New York, New York  
August 12, 2016**

\_\_\_\_\_/s/\_\_\_\_\_  
**John G. Koeltl**  
**United States District Judge**